No. 85-1437 (3)

Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1985

PATRICIA WILKINS,

Petitioner,

v.

CHRISTOPHER SAYRES, RONALD LOVEJOY, JOSEPH ENGLEHARDT, EDDIE SANCHEZ, RICHARD BUCHOLTZ,

Respondents.

PATRICIA WILKINS,

Petitioner,

v.

FREDERICK ROUSCH, ORRIE YNIQUEZ, WILLIAM COWHEY, WALTER JACKSON,

Respondents.

SECOND SUPPLEMENT TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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In the Supreme Court of the United States

OCTOBER TERM, 1985

PATRICIA WILKINS, PETITIONER,

v.

CHRISTOPHER SAYRES, ET AL., RESPONDENTS.

PATRICIA WILKINS, PETITIONER,

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FREDERICK ROUSCH, ET AL., RESPONDENTS.

SUPPLEMENT TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioner submits this Supplement to her Petition for Writ of Certiorari to set forth new authority for the position taken by petitioner in her Petition; to wit, that in civil rights actions brought under 42 U.S.C. 1983 (1982), in instances that the law was clearly

established with respect to the constitutional right alleged to have been violated, no jury instruction may be given on the affirmative defense of qualified immunity; and to demonstrate that the law in the Seventh Circuit is in direct conflict with the law in the Ninth Circuit by virtue of the Seventh Circuit opinion cited herein, which was reported yesterday.

In Benson v. Allphin, 786 F.2d 268, 274 (7th Cir. 1986) (reported in this week's Federal Reporter advance sheet), the court held:

> [T]he question of qualified immunity is addressed to the court, not the jury. See Mitchell v. Forsyth, ___ U.S. ___, 105 S. Ct. 2806, 86 L. Ed 2d 411 (1985); Harlow, 457 U.S. at 818-19, 102 S. Ct. at 2738-39; Bates v. Jean, 745 F. 2d 1146, 1151 (7th Cir. 1984).
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> ...

[T]he issue of qualified immunity is one for the trial court, not the jury.

Benson fully supports petitioner's position as taken in her Petition and is an accurate statement of the law on qualified immunity. Since the District Court in petitioner's case found, as a matter of law, that the relevant law was clear, defendants were not entitled to have their defense of qualified immunity go to the jury, and it was error for an instruction on qualified immunity to have been given. Hence, the Court of Appeals should have reversed the judgment in favor of defendants.

Additionally, the law on this point is in conflict between the Ninth and Seventh Circuits, as well as between the Ninth and Tenth Circuits. See Supplement to Petition for Writ of Certiorari at 4.

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